

Press Release.

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Morrison & Foerster Secures Victory for Indiana Protection and Advocacy Services in 11th Amendment Case

CHICAGO, IL (April 22, 2010) – Morrison & Foerster today received a favorable ruling for Indiana Protection and Advocacy Services (IPAS) in a case against state-operated hospitals that was argued before all the judges of the United States Court of Appeals for the Seventh Circuit. Judge David Hamilton, writing for 8 of 9 judges, confirmed that federal law requires hospitals to give IPAS access to records, and if hospitals don't comply, they can be sued in federal court. The decision resolves in favor of IPAS the state hospital's claim that the 11th Amendment barred IPAS, an independent state agency, from suing other state officials in federal court. It also resoundingly affirms that the federal law authorizing access to records – the PAIMI Act – provides a federal cause of action for equitable relief and that authorizes access to peer review records.

IPAS, which protects individuals with disabilities, sued the state officials in 2006 for refusing to turn over pertinent records after a death and an allegation of abuse at a state hospital. The state officials claimed that IPAS did not have the right to access the requested records and that the state officials could not be sued in federal court. After an adverse decision by a three-judge appellate panel, IPAS obtained rehearing by the entire Seventh Circuit. IPAS, supported by the federal government and the National Disability Rights Network, argued the case against the Solicitor General of Indiana in February of this year.

"Today the Court recognized the critical role that protection and advocacy services such as IPAS play in ensuring the rights of people with disabilities and mental illness to be free from abuse and neglect," said Morrison & Foerster of counsel Seth Galanter, who was the lead attorney representing IPAS. "This battle has always been about access to records, and we are pleased that this decision will ensure that the state understands that compliance isn't optional."

"Congress created P&As 35 years ago to protect and advocate for individuals with disabilities, especially those who were often abused and neglected in state institutions. We applaud the court for finding that states can't avoid the oversight Congress intended," said Curtis Decker, executive director of National Disability Rights Network, of which IPAS is a member.

Mr. Galanter's winning team included Morrison & Foerster partner Brian R. Matsui and associate Jeremy M. McLaughlin. The firm served as co-counsel with IPAS' inside counsel, Debra J. Dial and Karen Davis. The case was handled pro bono.

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